

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CATHERINE E. MCCOY-DEWBERRY

Claimant

VS.

CITY OF WICHITA

Respondent

Self-Insured

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Docket No. 262,916

ORDER

Respondent appeals the August 29, 2002 preliminary hearing Order of Administrative Law Judge John D. Clark. The Administrative Law Judge's Order required respondent to furnish the names of three physicians for selection of one by claimant for treatment to her left knee and low back. Respondent is not contesting compensability of the low back injury, but disputes a left knee connection to her fall of January 27, 2001.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of her employment on January 27, 2001, to her left knee?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant suffered injury on January 27, 2001, when she fell from the back of a truck while performing snow removal activities for respondent. Claimant injured her left leg, left shoulder, back and head. The emergency room records at that time indicate a bruise on claimant's thigh, but show no range of motion problems or pain in the left knee. Claimant first mentioned her left knee when she was examined by her family physician, Val J. Brown, Jr., M.D., on July 2, 2001. At that time, the knee pain was discussed in relation to claimant's preexisting arthritis, which she had since 1989. However, the medical report of Dr. Val Brown does mention that claimant's knee problems are "effecting *[sic]* her ability to work."

The first time claimant alleged involvement of the left knee from the January 27 fall occurred on March 15, 2002, when she was being examined by Dr. Val Brown. At that time, an MRI was performed, revealing internal derangement of the knee involving a "detachment of the anterior cruciate ligament with a piece of bone that came off." Claimant's range of motion at that time even with the anterior cruciate ligament detachment was full with both extension and flexion. Dr. Val Brown commented in his March 15, 2002 report that a fall from a truck would be sufficient force to dislodge the ligament from its bony attachment. Dr. Brown gave no explanation regarding the length of time between claimant's fall and her original knee complaints.

Due to the confusion regarding claimant's ongoing knee problems and as a result of an agreed order, claimant was referred to orthopedic surgeon C. Reiff Brown, M.D., by the Administrative Law Judge. Dr. Brown was ordered to address the relationship of claimant's knee problem to the January 27, 2001 accident. In his report of July 10, 2002, Dr. Brown found claimant's left knee problems to be related to the January 27, 2001 fall. The Board acknowledges that the history provided to Dr. Brown indicates injury to claimant's left knee at the time of the fall. This history is somewhat contradicted by the emergency room records, which found claimant's left knee range of motion to be normal, without pain. However, claimant did testify at preliminary hearing that she suffered injury to her left leg during the fall. She further testified that the initial significant problem was to her left shoulder, for which she underwent surgery. Following the surgery, claimant continued having problems with both her back and her left knee. Claimant testified that the left knee problems she was experiencing were different than anything she had ever experienced before, even with the preexisting arthritis. She was having difficulty walking and bending her knee, and at night when she slept the knee would cause her pain whenever she moved wrong.

Claimant denies any significant injury to her left knee other than the fall of January 27, 2001.

The Board finds, based upon the medical records of both Dr. Val Brown and Dr. C. Reiff Brown and upon the testimony of claimant, that claimant's left knee problems are related to the fall of January 27, 2001. This finding is also based upon the fact that there is no other medical opinion in the record which contradicts the medical opinions of Dr. Val Brown and Dr. C. Reiff Brown.

Preliminary awards are not binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated August 29, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2002.

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation